

MHPA210005862017



ORDER BELOW EXH.58 IN
R.C.S. NO.191/20217
CHANDRAKALA VS. VISHWANATH & OTHERS
[PASSED ON 01/10/2023]

This is an application filed by the plaintiff for addition party under Order I Rule 10 of the Code of Civil Procedure, 1908. Application is supported by the affidavit.

02. Considering the contentions of plaintiff following points arise for determination and my findings against each of them for the reasons are given below:-

Sr.No.	Points for determination	Findings
1.	Whether the proposed defendants are necessary for effective and complete adjudication of the suit and settle all the questions involved in the suit ?	Yes.
2.	What order?	As per final order.

REASONS

POINT NO. 01 and 02 :-

03. The learned advocate for the plaintiff submitted that the instant suit is filed for the declaration and recovery of possession of encroached land. On 21/03/2018 the applicant filed an application for appointment of Court Commissioner. Thereafter, by passing

necessary order T.I.L.R. Sonpeth is appointed for joint measurement of the suit property. After measurement T.I.L.R Sonpeth filed a report and map. On perusal of the same, it appears that defendant No.03 Sunil Bankatrao Puri and defendant No.04 Bharat Narayan Tak encroached 15 R and 09 R land of the plaintiff.

04. He further submitted that, during pendency of suit on 27/05/2024 by way of sale deed No.653/2024 defendant No.04 Bharat Tak sell out entire land in Gat No.38/A to one Vidya Balaji Pawar. Defendant No.04 Bharat Tak encroached over 09 R land of the plaintiff. Encroached land is still in the possession of the defendant No.04. With this background the plaintiff prayed to add Vidya Balaji Pawar as party respondent in the suit. It is further submitted that, in case of allowing the instant application no prejudice would cause to the defendants. Based on these submissions the plaintiff prayed to allow the application.

05. Despite service of summons report vide Exh. 64 shows that, the proposed defendant Vidya Pawar failed to appear in the suit. Thus, this application is proceed without her say. Now question remains that, whether addition of parties are necessary for effective and complete adjudication of suit. In answer to this question, it is

necessary to see the provision under Order I Rule 10 of the Code of Civil Procedure. On careful reading of the aforesaid provision, it is seen that, the court at any stage of the proceeding, if find the presence of the parties is necessary for effective and complete adjudication and to settle all the questions involved in the suit. In the instant case principle relief of the plaintiff is the declaration and recovery of possession of encroached land.

06. Considering the relief claim by the plaintiff, the presence of proposed defendant is necessary for effective and complete adjudication of the suit. If the application is rejected, it would caused injustice to the plaintiff and he may lose his right in the suit property and may face difficulties at the event of execution of decree. Thus, considering the nature of suit, it would be appropriate to allow the instant application and permit the plaintiffs to add the proposed defendants in the suit. Indeed, there is a delay in filing these applications however, it can be compensated by saddling the cost upon the plaintiff. In view of the aforesaid discussion points No. 1 and 2 are answered in the affirmative and following order is passed.

ORDER

- 1) The application below Exh.58 is allowed as prayed subject to payment of the cost of

Rs.1000/- to deposit at T.L.S.A. Sonpeth.

- 2) The plaintiff is permitted to add the proposed defendant Vidya Balaji Pawar in the plaint and directed to carry out the necessary amendment as prayed in this application within period of 14 days from the date of this order.
- 3) Accordingly the instant application is disposed of.

Date :- 01/10/2025.

(Dr. A.Z. Sayed)
Civil Judge Junior Division,
Sonpeth.